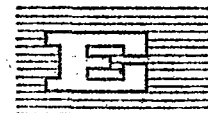


UNITED NATIONS  
ECONOMIC  
AND  
SOCIAL COUNCIL



Distr.  
GENERAL

E/CN.4/1982/SR.34  
2 March 1982

ENGLISH  
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

Thirty-eighth session

SUMMARY RECORD OF THE 34th MEETING

held at the Palais des Nations, Geneva,  
on Tuesday, 23 February 1982, at 8 p.m.

Chairman: Mr. GARVALOV (Bulgaria)

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GE.82-15604

The meeting was called to order at 8.15 p.m.

QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS, INCLUDING:

- (a) PROBLEMS RELATED TO THE RIGHT TO ENJOY AN ADEQUATE STANDARD OF LIVING; THE RIGHT TO DEVELOPMENT
- (b) THE EFFECTS OF THE EXISTING UNJUST INTERNATIONAL ECONOMIC ORDER ON THE ECONOMIES OF THE DEVELOPING COUNTRIES, AND THE OBSTACLE THAT THIS REPRESENTS FOR THE IMPLEMENTATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS (agenda item 8)  
(continued) (E/CN.4/1334; E/CN.4/1421; E/CN.4/1488; E/CN.4/1489; E/CN.4/1982/NGO/2; E/CN.4/1982/NGO/8; A/36/462; ST/HR/SER. A/10)

STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS (agenda item 19) (continued)  
(E/CN.4/1511)

1. Mrs. GRAF (International League for the Rights and Liberation of Peoples) said that the right to development might appear utopian to some, but, as Professor Rigaux had written in connection with the Universal Declaration of the Rights of Peoples: "Utopia consists in believing that the present situation of domination, exploitation and impoverishment of the poorest can continue indefinitely. The real utopians are those who hope that the present structures of domination are imperishable. These structures are not only unjust, they could not be maintained except by an intensification of repression, which would create more problems than could be solved. Only a new vision of society, a universal project commensurate with the problems before us, can enable us to envisage the future of mankind with confidence". It was in that spirit that her organization intended to support all efforts to transform the right to development into practice and give it the broadest possible scope.
2. Unlike some persons, for whom the right to development was an essentially collective right which could, at a pinch, justify certain temporary violations of human rights, her organization believed, like the Commission on Human Rights, that development was a prerogative of both nations and individuals within nations and that, as Mr. P. Alston had emphasized in his communication to the symposium of the Academy of International Law, the benefits obtained by the satisfaction of collective rights should be constantly and deliberately channelled towards the satisfaction of the rights of the individual.
3. The right to development, which was both an individual and a collective right, belonged not only to States but also to peoples and to indigenous or minority groups. As was stated in the Universal Declaration of the Rights of Peoples, "Every people has the right to choose its own economic and social system and to follow its own path towards economic development, freely and without outside interference" (article 11)

and "The economic rights set forth above should be exercised in a spirit of solidarity among the peoples of the world and with due regard for their respective interests" (article 12). The right to development, which was to some extent a synthesis of many human rights, could greatly assist the international community to solve the most serious problems with which it had to cope, especially at the economic level. States and international organizations, therefore, should make the recognition of that right the foundation for all their attempts to establish a new international economic order.

4. Although it was true that the right to development constituted a synthesis of human rights and that, in many respects, its effective exercise was a prerequisite for their observance, it was important, especially in a time of international crisis, to draw from that fact all the logical conclusions. As the Secretary-General emphasized in his study on the regional and national dimensions of the right to development as a human right (E/CN.4/1421), which he had submitted to the Commission on Human Rights at its thirty-seventh session, the right of peoples to self-determination was an essential element and a prior condition for the realization of the right to development. The establishment of a new international economic order was aimed at encouraging the realization of the right to self-determination in the fullest sense of the term, an objective which applied not only to former colonies but to all States, and which was of crucial importance for the developing countries.

5. Her organization was convinced that all the conditions existed at the technical level for transforming the right to development into actual practice. If that right, which made it obligatory for communities and individuals to undertake concrete activities for development instead of limiting themselves to discussing them in international organizations, had not always been realized, it was because of the basic iniquities and imbalances of the current structures of the world economy, which were largely responsible, as the Secretary-General emphasized in his study, for upsetting the balance of payments of the developing countries and increasing their indebtedness. It was also because of the continuation of the arms race, and because the right to life, an essential aspect of the right to development, was not only being scoffed at daily in very many countries but was also currently the object of a contemptible global blackmail practised through what was called the weapon of hunger.

6. There would be no development, she concluded, unless the masses were allowed to participate freely in it and unless the most disadvantaged people were given the means to exercise their right to development themselves.

7. Mr. EYA NCHAMA (International Movement for Fraternal Union Among Races and Peoples) said that his organization had long been interested in the question of the right to development, since the exercise of that right, which was an integral part of human rights, was one of the preconditions for the establishment of a genuine fraternal union between peoples and races. The Working Group of governmental experts on the right to development had drafted an excellent report (E/CN.4/1489) and he hoped that the Group's mandate would be extended so that it could submit a complete report to the Commission at its forthcoming session.

8. To affirm the right to development was to recall that, at the national level, the State belonged to everybody and was not the exclusive property of a small group of individuals, and that, at the international level, the earth was the common heritage of all mankind, the inhabitants of the southern hemisphere having as much right to it as the inhabitants of the northern hemisphere.

9. That meant that development was the business of all and that the participation of peoples in their own development constituted the cornerstone of the right to development. Development activities imposed by élites without consulting the population could hardly be profitable. Unfortunately, in many countries of the southern hemisphere, the leaders refused to associate their fellow-citizens with national development, thus denying them any right to development, the more vigorously the more significant the aid given them by the countries of the northern hemisphere. That situation led one to wonder what type of development those leaders envisaged for their countries.

10. In the southern hemisphere, especially in Africa, some countries were even going so far as to expel many of their nationals in order to prevent them from participating in the work of development. The 5 million refugees who were currently to be found on the African continent had been driven from their countries by leaders who refused to associate them with national development. In some African countries, in parallel with the increase in the number of such refugees, a small new class was being formed whose members were the possessors of considerable wealth. Consequently, his organization urged the donors in the countries of the northern hemisphere to take care to ensure that the aid furnished by their Governments to the developing countries in the southern hemisphere was actually benefiting the peoples of those countries and was not going to enrich minority groups which claimed to represent them.

11. It was not by strengthening fascist oligarchies and dictatorships but, on the contrary, by fighting against them that the development of the peoples of the southern hemisphere could be promoted and, if a new international economic order was to be established, it was primarily necessary to enable all people, both in the north and in the south, to take their development into their own hands.

12. Once all the peoples of the earth were allowed to participate in decision-making and in preparing development plans, an atmosphere favourable to peace would gradually be created. The time had in fact come, he concluded, to choose between the continuation of the arms race and the promotion and protection of human rights, all of which were indivisible and of equal importance.

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION  
OF MINORITIES ON ITS THIRTY-FOURTH SESSION (agenda item 20) (continued)  
(E/CN.4/1512; E/CN.4/1982/NGO/5)

13. Mr. KOOLJMANS (Netherlands) said that, during its 25 years of existence, the Sub-Commission had not concerned itself exclusively with the prevention of discrimination and protection of minorities. It had carried out various other tasks in the field of human rights and, from the moment that the Commission had requested it, in its resolution 8 (XXIII) of 16 March 1967, to prepare a report containing information on violations of human rights and fundamental freedoms, it had devoted more and more time to that question. In addition, it had carried out a considerable number of studies, which had sometimes formed the basis for preparing draft declarations and conventions or for formulating principles.

14. Those facts were well known to all the members of the Commission, but it might be useful to recall them before beginning consideration of the Sub-Commission's report and more particularly, of chapter III on the review of further developments in fields which had already been the subject of a study or inquiry by the Sub-Commission. His delegation welcomed the fact that the Sub-Commission had taken note of the valuable discussion to which the consideration of its report had given rise at the Commission's last session and the observations which had been made on that occasion concerning the limitations of its mandate.

15. With respect to the role and competence of the Sub-Commission, he thought that some interesting suggestions had been made with a view to strengthening the activities of the Sub-Commission in the field of human rights and ensuring that its resolutions and reports were relevant to the establishment of practical and effective legal norms. On the other hand, if, as had been proposed, it decided to change its name and status to that of a committee of experts on human rights, which would report directly to the Economic and Social Council, the Sub-Commission might lose its contact with the Commission. In his opinion, however, it was quite possible to strengthen the role of the Sub-Commission without separating it from the Commission. His delegation attached great importance to the independence of the members of the Sub-Commission and thought that more attention should be given, in that connection, to the practice that was still in force of appointing alternates - most of whom were diplomats stationed at Geneva - to replace the members of the Sub-Commission. It intended to monitor the development of that situation very closely.

16. To give an example of the important role which the Sub-Commission might play, especially when an event which called for an urgent reaction occurred between two sessions of the Commission, he recalled that, on 28 August 1981, the Sub-Commission had decided to ask the Chairman of the Commission on Human Rights to intervene urgently to save three members of ANC who had been sentenced to death in South Africa, and that, pursuant to that decision, the Chairman of the Commission on Human Rights had sent a telegram to the South African Government requesting it not to proceed with the execution of the three

condemned men. In so doing, the Sub-Commission had not exceeded the limits of its authority and, consequently, no one could blame it for having reacted promptly to try to prevent the execution of three opponents of the apartheid régime.

17. Turning to the report submitted by the Special Rapporteur, Mr. Martínez Cobo, concerning the study of the problem of discrimination against indigenous populations, he said that his Government had found in it a wealth of highly valuable information for all those who, like himself, were concerned about the situation of Indian tribes and other indigenous groups throughout the world. The information describing the discrimination practised against indigenous populations and the alarming situation in which some of them had to live, had caused deep concern in his country, a concern which had also been expressed by the members of his country's Parliament. Consequently, his delegation fully supported the idea of establishing, as the Sub-Commission had requested, a working group on indigenous populations. Once the Sub-Commission had been authorized to establish such a working group, it might perhaps consider contacting the working group that had been set up by the Nordic countries to study the problem of indigenous populations.

18. In her progress report on the study of the implications for human rights of recent developments concerning situations known as states of siege and emergency (E/CN.4/Sub.2/490) Mrs. Questiaux had suggested the adoption of a number of basic principles guaranteeing the legality of the establishment of states of siege or emergency. Since the list of countries applying martial law - including most recently Poland - was becoming a little longer every year, it would certainly be useful if those principles were briefly summarized: a state of siege or emergency should be officially proclaimed; the other States parties to the Covenant on Civil and Political Rights should be speedily informed of its proclamation, as well as of the reasons adduced and the nature of the measures taken; its introduction should be occasioned by the existence of an exceptional threat, endangering the organized life of the community which constituted the foundation of the State; the emergency measures should be in proportion to the strict requirements of the situation and should not involve discrimination solely on grounds of race, colour, sex, language, religion or social origin; the state of siege or emergency should in no circumstances derogate from the rights referred to in article 4 of the Covenant; and, lastly, it should be compatible with the obligations imposed by international law. His delegation had also noted with appreciation the additional safeguards recommended by the International Commission of Jurists, in the study that it had made on the same subject.

19. There was another question which he thought that he should mention: the persecution of the Baha'i community in Iran. The Sub-Commission had adopted resolution 8 (XXXIV), by 19 votes in favour with 5 abstentions, in which it stated that the treatment of the Baha'is was motivated by religious intolerance and a desire to eliminate the Baha'i Faith from the land of its birth and drew the attention of the Commission on Human Rights to the perilous situation faced by the Baha'i community of Iran. His delegation wholeheartedly supported that resolution, inasmuch as some members of the Sub-Commission who were of the Islamic religion, and thus in a better position to understand the religious background

of the Iranian authorities, had not hesitated to denounce the repression of which Iranian citizens were the victims.

20. Lastly, his delegation had taken note with interest, but also with concern, of the report of the Working Group on Slavery and Mr. Bouhdiba's Final Report on Child Labour, from which it had appeared that new forms of slavery were making their appearance, such as child prostitution. His Government strongly condemned all forms of exploitation, in particular the sexual exploitation of children and minors, and would examine all the options available to it to fight that evil at the national and international levels.

21. Mr. CALERO RODRIGUES (Brazil) said that the item entitled "Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities" had always been included in the Commission's agenda, but not until the Commission's previous session had it been given the attention it deserved. His delegation hoped that that item would continue in the future to be the subject of a constructive and comprehensive debate, which alone could do justice to the Sub-Commission's work and contribute to the establishment of close co-operation between the Commission on Human Rights and its main subsidiary body.

22. The relationship between the Commission, a political organ, and the Sub-Commission, an expert body, was comparable to that which existed, in the field of international law, between the Sixth (Legal) Committee of the General Assembly and the International Law Commission and the United Nations Commission on International Trade Law (UNCITRAL). Following the example of the Sixth Committee, which attached considerable importance to consideration of the reports of the International Law Commission and UNCITRAL, the Commission on Human Rights should give special prominence at each of its sessions to the examination of the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The Sub-Commission considered that its present title did not correspond to its functions and would like to have it changed. His delegation fully sympathized with that view and would be prepared to accept a new designation for the Sub-Commission.

23. At its thirty-seventh session, the Commission had adopted, without a vote, resolution 17 (XXXVII) in which, inter alia, it had invited the Sub-Commission to take note of the comments and suggestions made at the time of the consideration of its report and had requested it to modify the report's presentation in certain respects, which the Sub-Commission had proceeded to do. Most of the comments and suggestions brought to the Sub-Commission's attention had concerned its mandate and methods of work. In that context, paragraph 23 of the Sub-Commission's report began with the statement "The role and competence of the Sub-Commission was discussed, particularly in relation to its composition as a body of experts acting in their individual capacity, which ensured its impartiality, unlike the Commission which is composed of Government representatives." His delegation was uneasy with the wording of that sentence and hoped that the Sub-Commission did not really believe that the impartiality of its members was guaranteed by the fact of its being a body of experts, unlike the Commission, which was composed of Government representatives, for such reasoning would be extremely dangerous. The

Sub-Commission and the Commission had an obligation to try to work together for common ends. As one member of the Sub-Commission had rightly pointed out, only the enemies of human rights stood to gain by any loosening of the ties between those two bodies.

24. Yet it was clear from the Sub-Commission's report and above all the summary records of its meetings that, in the view of some of its members, the Sub-Commission should endeavour to sever its links with the Commission on Human Rights and "become an autonomous committee of experts which was not responsible to the Commission on Human Rights, - a political body, - but reported direct to the Economic and Social Council" (E/CN.4/Sub.2/SR.896), as though the Economic and Social Council were not itself a political body. It had further been suggested that it would be preferable for members of the Sub-Commission to be elected by the Economic and Social Council rather than by one of its functional commissions, which was presumably an indirect way of criticizing the Sub-Commission's current membership. Fortunately, more reasonable suggestions had been made. In particular, one member had declared that the Sub-Commission, "instead of trying to modify its structure and its mandate at the risk of coming into open conflict with the Commission on Human Rights, should continue to carry out the honourable tasks entrusted to it, which were acquiring even wider coverage" (E/CN.4/Sub.2/SR.898). Another member had stated that, in his view, the main criticism made by the Commission on Human Rights concerning the Sub-Commission, - that it was taking too political a turn, - was fully justified.

25. In those circumstances, his delegation had mixed feelings about the Sub-Commission's decision 2 (XXXIV), whereby it had introduced into its agenda a new item entitled "Review of the status and activities of the Sub-Commission and its relationships with the Commission and other United Nations bodies." Properly conducted, that review might be helpful in defining the constructive role which the Sub-Commission had to play in the United Nations system in promoting the effective enjoyment of human rights and fundamental freedoms. On the other hand, if some extreme and misguided views were to prevail, the Sub-Commission might find itself on a direct collision course with the Commission and with the United Nations as a whole. However, he was confident that members of the Sub-Commission would recognize that co-operation and trust were preferable to confrontation and suspicion.

26. Before proceeding to review the Sub-Commission's activities, he wished to make a few comments on the question of the designation of alternates. At the thirty-fourth session, the number of alternates who had taken part in the discussions at one time or another had represented no less than 40 per cent of the total number of participants, a situation which was hardly likely to allay the concern expressed by the Commission in its resolution 17 (XXXVII). The Commission, it would be remembered, had deemed it "unsuitable" that experts should be represented by alternates who did not necessarily possess the requisite expertise and had drawn attention to the fact that that practice might not, on occasion, be in keeping with the character of the Sub-Commission. The members of the Sub-Commission seemed to have paid scant attention to that resolution, for at the thirty-fourth session they had designated more alternates than at the previous one. In his delegation's view, rule 13 of the rules of procedure of the functional



commissions did not apply to the Sub-Commission, since it covered subsidiary bodies whose members were experts nominated by Governments. Members of the Sub-Commission were elected by the Commission on Human Rights, and the designation by them of alternates had no legal foundation; the Commission, which considered that practice unsuitable, would be justified in seeking an end to it. The experts in the Sub-Commission were undoubtedly conscious of their responsibilities and if one of them was occasionally unable to attend a meeting, his absence should merely be noted; if, on the other hand, a member felt that, for some reason, he was unable to continue to serve in the Sub-Commission, he should tender his resignation and a new member should be elected, either by the Commission or by the Sub-Commission itself, in the event that the procedure already applied by the International Law Commission was adopted.

27. At its thirty-fourth session, the Sub-Commission had had a heavy agenda, and seemed to have been confronted with the same problem as the Commission itself, in that it had had to consider an unduly large number of questions within a necessarily limited time. That problem seemed to be occurring with increasing frequency in all United Nations bodies and it was certainly not easily solved. The Sub-Commission, like the Commission, would have to find solutions, perhaps devoting a particular session to a number of priority topics and examining certain questions only every two years, for example. Extending sessions did not appear to be much help, judging from the Commission's experience.

28. The numerous questions on the Sub-Commission's agenda had included an item concerning the encouragement of universal acceptance of human rights instruments. On that point, he would merely reaffirm his country's view that, in that instance, the Sub-Commission was clearly exceeding its mandate. Each State being the only judge of its interest in becoming a party to an international treaty, any attempt to influence that decision would be improper. International organizations should not, therefore, engage in any action aimed at encouraging States to ratify treaties, nor should States be required to give any information as to their reasons for non-ratification.

29. The question of the violation of human rights in all countries was one of very wide scope, and the Sub-Commission had been right to pay particular attention to policies of racial discrimination and segregation, foreign occupation and infringements of the right to self-determination. However, it seemed to have shown a certain disregard for the procedures provided for in resolution 1503 (XLVIII) in dealing with some other aspects of the question. Thus, it had again been suggested that the establishment of an information-gathering service in the Division of Human Rights would be useful, as would the creation of a High Commissioner. As to the former suggestion, his delegation was still of the opinion that such a bureaucratic measure would be far too costly in relation to the services rendered. As for establishing a post of High Commissioner, his delegation would merely take note of the position of the Sub-Commission, whose decision 3 (XXXIV) prompted certain comments on its part: a study of the possible functions and powers of a High Commissioner would indeed be necessary, but to be useful, it must be impartial and objective, take into account the provisions of the Charter and of the various international human rights instruments, and examine the existing United Nations machinery, the powers which might be granted to the High Commissioner and the extent to which the establishment of such a post would really contribute to the cause of human rights. However, the Sub-Commission, by deciding to consider the "positive role" a High Commissioner for Human Rights should play, had already shown partiality. He therefore doubted that it would be able to conduct such a study with the requisite objectivity and impartiality.

30. In studying the adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to colonial and racist régimes in southern Africa, the Sub-Commission had had before it an updated report by Mr. Khalifa, Special Rapporteur. However, that document had the same flaw as the previous one, in that it merely furnished a list of entities, without assessing the extent to which their activities were indeed of assistance to the Pretoria régime. Such an assessment was, of course, an extremely difficult task, but it should be attempted.

31. Under the item on measures to combat racism and racial discrimination, the Sub-Commission had had before it a draft report prepared by Mr. Chowdhury, Special Rapporteur, on discriminatory treatment of members of different groups at various levels in the administration of criminal justice; in view of the very preliminary nature of that report, there was reason for doubting whether that was a justifiable exercise which could lead to concrete recommendations. It would be remembered, moreover, that the Commission, in its resolution 14 D (XXXVI), had requested the Sub-Commission to prepare a study on ways and means of ensuring the implementation of the United Nations resolutions on apartheid, racism and racial discrimination, for submission to the Commission at its current session. Two years had elapsed, yet the report of the Sub-Commission merely stated that the latter "should begin to give some thought" to that study, and that it was considering establishing a working group to look into the modalities for that study. The Commission could not but regard as regrettable negligence the dilatoriness displayed by the Sub-Commission in complying with its request.

32. Under the item entitled "Question of the human rights of persons subjected to any form of detention or imprisonment", the Sub-Commission had paid particular attention to the problem of missing or disappeared persons and to situations known as states of siege or emergency. The report of the Working Group on Detention had done little to advance the discussion; however, the Sub-Commission had approved two important draft resolutions, one recommending that Governments should be called upon to abolish capital punishment for political offences and the other requesting that violations of human rights in the Israeli-occupied territories should be condemned and that Israel should be called upon to release political prisoners.

33. With regard to situations known as states of siege or emergency, Mrs. Questiaux, Special Rapporteur, had submitted an interim report containing an excellent summary of the main points of the study she was preparing and a clear and concise account of the aspects she proposed to examine more particularly. He hoped that, even though Mrs. Questiaux was no longer a member of the Sub-Commission, she would be able to complete her extremely useful study, concerning which he would like to make two comments. First, in connection with the development of the role of specialist international surveillance organs, the Special Rapporteur seemed to envisage the establishment of a system of reporting and verification when a state of siege or emergency was proclaimed. He was not sure that existing international law made it obligatory for States to accept such a system, and if it was established, that would have to be done either on the basis of a binding international treaty or on the basis of voluntary compliance by States. Secondly, it was almost impossible to consider states of siege or emergency outside their political context, and it was difficult to imagine that questions relating to the observance of human rights in the event of a state of siege or emergency could be considered at the international level without the facts being distorted by political considerations; the Special Rapporteur and the Sub-Commission should keep that point in mind.

34. Under the same item, the Sub-Commission had also studied the question of missing and disappeared persons. Since the establishment of its Working Group on Enforced or Involuntary Disappearances, the Commission had assumed full responsibility for that question. In its resolutions 20 (XXXVI) and 10 (XXXVII), it had recognized that the Sub-Commission should make a contribution in that area and had requested it to continue studying the most effective means for eliminating enforced or involuntary disappearances of persons, with a view to making general recommendations to the Commission. His delegation was somewhat disappointed by Sub-Commission resolution 15 (XXXIV), which did not contain any of the general recommendations called for by the Commission. Most of the recommendations in that resolution were of a procedural nature, dealing with the operation of the Working Group of the Commission. In what could be considered a role reversal, the Sub-Commission even wanted the Commission to request the Working Group to prepare, for the Sub-Commission, a report permitting the latter to continue to make appropriate recommendations. It was natural that the Sub-Commission should wish to draw on the experience of the Working Group and the Commission, but for that, it had access to the Working Group's reports and to the summary records of the Commission's meetings. Moreover, the Sub-Commission, as a body of experts, should be in a position to make the general recommendations expected of it on the basis of an independent assessment of the problem. It was to be hoped that the Sub-Commission would review its approach so as to be able to make the contribution expected of it.

35. Pursuant to Commission resolution 40 (XXXVII), the Sub-Commission had commenced consideration of the question of conscientious objection to military service, and had requested two of its members to make an analysis of the problem in a human rights context. He hoped that they would take account of the fact, already emphasized in paragraph 352 of the Sub-Commission's report, that that issue was a complex one which should be submitted to a thorough and dispassionate study.

36. For its consideration of the question of slavery and the slave trade, the Sub-Commission had had before it two main documents: the report of the Working Group on Slavery and the preliminary report prepared by Mr. Whitaker; the Council, incidentally, had not appointed Mr. Whitaker Special Rapporteur, as stated in paragraph 279 of the Sub-Commission's report, but had merely authorized the Sub-Commission to entrust him with the preparation of a report. That remark also applied to Mr. Bouhdiba. The study of that question was made particularly difficult by the virtual disappearance of slavery and the slave trade in their classic forms. Of course, the existence of practices akin to slavery and the slave trade was disturbing, but only practices which actually constituted forms of slavery should be considered under that item. There was sometimes a tendency to classify in that category certain practices which, though deserving condemnation as violations of human rights, could nevertheless not be described as manifestations of slavery. Although apartheid or the traffic in persons for the purpose of prostitution could certainly be included in that category, the same could not be said of the practice of female circumcision. His delegation was glad to note that the questionnaire prepared by Mr. Whitaker adequately covered the field to be encompassed by a study on slavery and the slave trade. The report of the Working Group on Slavery, however, showed that the latter had exceeded its terms of reference. He quite understood the Working Group's humanitarian concern, but he believed that it would be more in keeping with the Group's purpose and more directly useful if it focused on practices

which were indeed manifestations of slavery. He hoped that the Sub-Commission, which had resolved to devote special attention to issues relating to violations of women's and children's rights, including the sexual mutilation of female children, would bear those considerations in mind.

37. For its consideration of the question of the exploitation of child labour, the Sub-Commission had had before it the excellent final report prepared by Mr. Bouhdiba (E/CN.4/Sub.2/479). Admittedly, and perhaps unavoidably, Mr. Bouhdiba had not confined himself to that one question, but he had presented an impressive picture of the problems affecting children in many parts of the world. It was true that some of the information in that document was given in the form of questionable generalizations. For instance, paragraph 116 contained the statement: "in Bolivia, Chile, Brazil, Thailand, the Maghreb ... children are often 'given' away in payment for a debt entered into by the family or merely to have one mouth less to feed". In the case of Brazil, the use of the word "often" was entirely unjustified. The report was nevertheless an important contribution to creating an awareness of a distressing situation. In its resolution 18 (XXXIV), the Sub-Commission had decided to consider at its thirty-fifth session the drawing up of a concrete programme of action, which it had invited Mr. Bouhdiba to prepare. That was an awesome task for, as the latter had pointed out in his report, improving the lot of children who did not enjoy their fundamental rights would necessitate a vast amount of effort, co-operation and goodwill. As Mr. Bouhdiba recognized, no international action could replace action by States, and it was for the latter to take all the necessary legislative, economic, social, cultural and even penal measures. Provided that the Sub-Commission approached its task from that angle, it would be doing most useful work.

38. The Sub-Commission had been presented at its thirty-fourth session with the long-awaited final report by Mr. Martínez Cobo on discrimination against indigenous populations. While the documents before the Sub-Commission (E/CN.4/Sub.2/476 and Add.1-6) had not constituted the report in its entirety, and their presentation was somewhat confused, they nevertheless held forth the promise of an impressive final document, containing a tremendous amount of information which the Sub-Commission would be duty bound to examine with the utmost attention, particularly as far as the conclusions and recommendations of the Special Rapporteur were concerned. Resolution 3 (XXXIV) showed that that, indeed, was its intention.

39. However, in its resolution 2 (XXXIV), it requested the Commission to authorize it to establish, without even waiting to consider Mr. Martínez Cobo's report, a Working Group which would meet before its sessions in order to review developments pertaining to the promotion and protection of the human rights of indigenous populations, including information received annually from Governments and various organizations; to avoid giving the impression of burying Mr. Martínez Cobo's report even before it had seen the light of day, the Sub-Commission added that the Group in question should do its work "bearing in mind" that report. The idea of establishing such a working group went back to the start of the Sub-Commission's session: in his introductory statement, the Director of the Division of Human Rights had suggested that it was perhaps time to consider setting up a working group on the human rights of indigenous peoples; Mr. Martínez Cobo himself had unfortunately supported that

idea. Undoubtedly, Mr. Martínez Cobo's report should not be regarded as the final word on the matter; on the contrary, the analysis of that report and the conclusions drawn from it should provide the basis for specific action. However, such action should not be confined to the international level: national action had pride of place. In referring in his introductory statement to the need to move swiftly to the stage of concrete action, Mr. van Boven had appeared to have a narrow conception of such action confined to the Sub-Commission. While action taken by the Sub-Commission or even by the Commission might be gratifying to its initiators, it would not make a significant contribution to solving the problems.

40. In that connection, his delegation would like to draw attention to the fact that the working group envisaged in the draft resolution submitted to the Commission would be given the task of considering information requested annually by the Secretary-General: thus, indirectly, a system of annual reporting would be established without any legal basis. The communication of information by Governments would thus be purely voluntary, in which case it was permissible to wonder how much information would be received and how useful it would be. He deplored the tendency of United Nations bodies to request more and more reports; Government offices were inundated with requests, and resources which might be more usefully employed in substantive activities were devoted to bureaucratic tasks; that would be particularly true in the present case. His delegation's position was therefore clear: it was opposed to the Sub-Commission's request to establish a new working group. Presumably the Sub-Commission would have before it, at its next session, the report by Mr. Martínez Cobo, including its conclusions and recommendations. After considering that report, the Sub-Commission would present its own conclusions and recommendations, and only then would the time have come for action.

41. The Sub-Commission had entrusted Mrs. Daes, Special Rapporteur, with the task of preparing a study on the status of the individual and contemporary international law. The preliminary information provided by the Special Rapporteur showed her to be a person of great competence, and suggested that the study in its final form would be an extremely scholarly work that would satisfy theoreticians; however, the practical usefulness of the study, having regard to the Sub-Commission's mandate, was more doubtful. Mrs. Daes had also been entrusted with the task of elaborating guidelines and principles for the protection of persons detained on account of mental disorder. She had begun by preparing a questionnaire which had been transmitted to Governments and international organizations. In his view, that questionnaire was too ambitious. Some of the questions were almost naive, while others were too encyclopaedic. In short, such a questionnaire did not appear to be the best way of approaching the study in question.

42. Mr. Singhvi, who had been requested to prepare a study on the independence and impartiality of the judiciary, had submitted an entirely preliminary report. The Special Rapporteur had indicated that he had compiled a bibliography and sent out a questionnaire - which was not reproduced in his report. On the other hand, the draft principles elaborated by a Committee of Experts which had met in 1981 under the auspices of the International Association of Penal Law and the International Commission of Jurists did appear in the report, and they should be most helpful to the Special Rapporteur.

43. Finally, Mr. Ferrero had presented a progress report on the new international economic order and the promotion of human rights which confirmed the particularly complex and sensitive nature of that subject, covering an extremely broad field. Mr. Ferrero's contribution on the topic would undoubtedly be extremely interesting.

44. The reason he had spoken at such length on the Sub-Commission's work was that he was convinced of the need for the Commission to follow that work attentively and to make detailed comments on it even if, as in his own case, those comments were sometimes critical.

45. Mr. DIAGNE (Senegal) commended the Sub-Commission on Prevention of Discrimination and Protection of Minorities for its very full report on the work of its thirty-fourth session (E/CN.4/1512) and said that the Commission should give the Sub-Commission the necessary encouragement and assistance to enable it to perform its task. On a general point, his delegation considered the time allotted to the consideration of the Sub-Commission's report inadequate. Perhaps it would be possible to adopt the suggestion his delegation had made the previous year to establish a working group which would meet during each session to study the Sub-Commission's report and its recommendations to the Commission.

46. Turning to the more specific questions dealt with in the report, he said he was in favour of the recommendation to the Commission to establish a working group to gather information, conduct inquiries and formulate recommendations on indigenous populations. Although some delegations took the view that the proliferation of working groups should be avoided, his own delegation considered that such groups should be set up whenever the situation warranted and that the United Nations should spare no effort, material or financial, to safeguard the human rights of oppressed groups.

47. With regard to slavery and the slave trade, his delegation hoped that the Commission would authorize the Sub-Commission to send experts to Mauritania to study the situation there. The Working Group should exercise prudence and discretion in making use of the information it obtained and should establish a fruitful dialogue with Governments and institutions, which for their part should provide it with all the necessary assistance to enable it, in agreement with the Sub-Commission acting within its mandate, to supervise the implementation of conventions on slavery and propose appropriate sanctions.

48. The exploitation of child labour was another source of concern to his delegation, which favoured the adoption of the two draft resolutions which the Sub-Commission had submitted to the Commission on the subject.

49. The situation concerning persons subjected to any form of detention or imprisonment or to cruel, inhuman or degrading treatment, or concerning enforced or involuntary disappearances, had scarcely improved. His delegation was therefore in favour of extending the mandate of the Working Group on Enforced or Involuntary Disappearances. On the other hand, it did not think it necessary to establish a working group to meet before sessions. The main thing was to ensure harmonious co-operation between the Working Group and the Sub-Commission so that their activities were complementary and effective. In that connection, his delegation approved of the courses of action set forth in operative paragraph 6 of Sub-Commission resolution 15 (XXXIV).

50. On the subject of the draft convention against torture, his delegation endorsed the principle of universal competence provided for in that convention and the setting up of an international body to implement it. It was gratified, moreover, to note that the Sub-Commission had decided to study, at its thirty-fifth session, the question of establishing a post of United Nations High Commissioner for Human Rights. That study should relate not only to the positive role a High Commissioner should play in the full enjoyment of human rights, but also and above all to the terms of his mandate, so that specific recommendations and proposals could be submitted to the Commission at its thirty-ninth session. His delegation would support any resolution to that effect, taking due account of the position of certain countries which considered that the establishment of a post of High Commissioner for Human Rights might be used for purely propaganda purposes.

51. The activities of the Working Group on the Encouragement of Universal Acceptance of Human Rights Instruments, together with those of the Sub-Commission, had apparently led to numerous ratifications. According to the Group's report (E/CN.4/Sub.2/L.785), the main obstacle to the universal acceptance of those instruments was incompatibility between the domestic law of States and the provisions of conventions. However, those difficulties were not insurmountable, for States could always adapt their domestic law to international human rights law. They should ratify those instruments with reservations only where such adaptation was absolutely impossible. Pursuant to recommendations by the Human Rights Committee and the Committee on the Elimination of Racial Discrimination, his own country had amended some of its constitutional and legislative provisions to bring them into line with the international instruments to which it was a signatory. His Government had also taken all the necessary steps to make the declaration provided for in article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination before the spring session of the Economic and Social Council. The activities of the Working Group and other competent United Nations bodies in promoting the universal acceptance of human rights instruments should be encouraged. It was not true to say that the Sub-Commission was exceeding its mandate when, through the Secretary-General, it approached Governments with a request for information on the difficulties they encountered in ratifying the instruments in question. A minimum of initiative was required to ensure that the Sub-Commission's action was really effective.

52. The usefulness of the work performed by the Sub-Commission, a body of independent experts, needed no further demonstration. To attempt, at all costs, to confine its action to narrow limits which no longer corresponded to the reality of the increasingly numerous violations of human rights or the multiplicity of its tasks would be regrettable. While the Sub-Commission should not have wider powers than the Commission or assign itself additional powers on its own initiative, it must nevertheless be granted the necessary independence to carry out its work with complete objectivity. There was no doubt that the present designation of the Sub-Commission no longer reflected its actual activities. Perhaps it might simply be called the "Sub-Commission of the Commission on Human Rights".

53. On a related point, his delegation considered the Sub-Commission's decision to introduce into the agenda of its thirty-fifth session a new item entitled "Review of the status and activities of the Sub-Commission and its relationships with the Commission and other United Nations bodies" a very timely one. It would like to see that review carried out in three parts: (i) Relationship of the Sub-Commission with the Commission on Human Rights; (ii) Relationship of the Sub-Commission with other United Nations bodies competent in the field of human rights; and (iii) Relationship of the Sub-Commission with some other United Nations bodies.

54. That review should not be confined to a study of the Sub-Commission's relationships with other bodies, but should also extend to the improvement of its working methods having regard to the following recommendations: first, the need to avoid making the Sub-Commission a factotum by entrusting it with studies or research on questions already examined in other bodies (for instance, the arms race and disarmament); secondly, the formulation of specific guidelines governing the Sub-Commission's activities and those of its different working groups; thirdly, the need to resist any politicization of or attempts to politicize the Sub-Commission's work, strictly observing the expert nature of that body and of its deliberations; fourthly, avoidance of the practice of designating alternates to replace experts serving in an individual capacity. That practice was contrary to the principle whereby the latter could not be replaced by persons who had not been elected in the same conditions; it could enable a State which was displeased by the way in which one of its nationals serving as a Sub-Commission expert was performing his task to replace him by another, more docile expert.

55. Mr. HEWITT (United States of America) said that his delegation had studied with careful attention the Sub-Commission's report on the work of its thirty-fourth session. Among the useful contributions to the work of the current session were resolution 11 (XXXIV) on human rights in Afghanistan, resolution 13 (XXXIV) on the human rights situation in Kampuchea, resolution 15 (XXXIV) on the question of enforced or involuntary disappearances, and resolution 8 (XXXIV), drawing the attention of the Commission to the perilous situation faced by the Baha'i community of Iran. The Sub-Commission was undoubtedly facilitating the Commission's work by providing it with information, proposing new solutions or approaches, or drawing attention to serious and urgent human rights problems.

56. The importance of the Sub-Commission's role stemmed from the fact that it was composed of independent experts. It might be useful to recall the terms of reference conferred on it by the Commission on Human Rights in 1947 and 1949:

"(a) To undertake studies, particularly in the light of the Universal Declaration of Human Rights, and to make recommendations to the Commission on Human Rights concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and linguistic minorities; and (b) To perform any other functions which may be entrusted to it by the Economic and Social Council or the Commission on Human Rights."



Accordingly, its terms of reference gave the Sub-Commission authority to operate broadly and to define for itself the tasks which seemed to it to be the most urgent and the most useful. It nevertheless remained an organ of the Commission on Human Rights, subject at all times to its supervision and direction. It was therefore incumbent on the Commission, as the representative of Brazil had rightly pointed out, to devote the necessary time to considering the annual reports of the Sub-Commission and to framing directives for its future work. In the absence of such directives, the Sub-Commission might occasionally have interpreted its terms of reference too freely, but such instances had been few and to avoid a repetition, the Commission was henceforth giving the work of the Sub-Commission the attention it fully deserved.

57. The Sub-Commission's terms of reference showed that one of its most important functions was to undertake studies. Some of those studies, which could only be carried out by experts, had come to be regarded as the definitive works on a particular right proclaimed in the Universal Declaration of Human Rights. His country was particularly interested in the current study on the protection of persons detained on grounds of mental ill-health, which it hoped would be completed as soon as possible. It also looked forward to receiving the conclusions of the study on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, and of the study on discrimination against indigenous populations.

58. In conclusion, he paid tribute to the high professional standards and objectivity displayed by the experts of the Sub-Commission in performing their task. Their status as independent experts enabled them to bring to problems an approach which inevitably differed from that of Government representatives. A more attentive attitude on the part of the Commission would remedy the few shortcomings noted. His delegation was prepared to give its support to the development of a better working relationship between the Commission and the Sub-Commission.

59. Mrs. MOLTKE-LETH (Denmark) said that her delegation appreciated the valuable work performed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its thirty-fourth session. During the discussion under item 11, some critical remarks had been made with regard to the Sub-Commission's role and competence. Her delegation did not associate itself with that criticism. No doubt the existing procedures could be improved and delays reduced, but that should not obscure the value of the Sub-Commission's work as a whole; its usefulness was attributable to the competence of its experts.

60. Her country was following with interest the studies being carried out by the Sub-Commission and attached particular importance to the one being prepared by Mr. Martínez Cobo on the problem of discrimination against indigenous populations. The first part of that report already provided some valuable, though disquieting, information on the situation of indigenous populations in many parts of the world and highlighted the urgent need to define standards on the subject. Her delegation fully supported the proposal in Sub-Commission resolution 2 (XXXIV), whereby the Commission would authorize the Sub-Commission to establish annually a Working Group on Indigenous Populations to meet before the annual sessions of the Sub-Commission in order to review developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations, and to give special attention to the evolution of standards concerning the rights of indigenous populations, with the co-operation, more particularly, of regional intergovernmental organizations and non-governmental organizations representing indigenous populations.

61. Her delegation was also interested in the study by Mrs. Questiaux on the implications for human rights of recent developments concerning situations known as states of siege or emergency, and in the report by Mr. Singhvi on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers. Finally, her delegation which had often stressed the need to be able to deal with cases of gross violations of human rights also outside the General Assembly, the Economic and Social Council and the Commission on Human Rights, welcomed the adoption by the Sub-Commission of its resolution 12 (XXXIV), in which it decided to inform the Commission that in its view the establishment of a post of United Nations High Commissioner for Human Rights would be highly valuable in advancing the promotion and protection of human rights in the world. She hoped that the Sub-Commission would be authorized to define the mandate of a United Nations High Commissioner for Human Rights and to submit recommendations on the subject to the Commission at its thirty-ninth session.

62. Mr. SOFINSKY (Union of Soviet Socialist Republics) said that the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the main subsidiary organ of the Commission, was entrusted with the study of extremely important questions such as action to combat apartheid and racism, the violation of human rights by Israel in the occupied Arab territories and its acts of aggression against front-line States, the gross and massive violations of human rights by dictatorial régimes, in particular in El Salvador, Guatemala and Chile, discrimination against indigenous populations, exploitation of child labour, and slavery. That accounted for the importance which the Commission traditionally attached to the consideration of the Sub-Commission's annual reports.

63. In some of those areas - for example, exploitation of child labour, discrimination against indigenous populations or the new international economic order - the Sub-Commission had done extremely useful work in furthering the study of measures to strengthen international co-operation with a view to ensuring the observance of human rights. However, for some time - particularly at its previous two sessions - it had displayed a regrettable tendency, which had been stressed by nearly all members of the Commission at its latest session, to exceed its powers and to devote a considerable proportion of its time to questions which were not within its competence, instead of discharging important tasks such as the preparation of the study on ways and means of ensuring the implementation of the United Nations resolutions on apartheid, racism and racial discrimination, as requested in Commission resolution 14 D (XXXVI). Consequently, at its thirty-seventh session, the Commission, after a long debate on the Sub-Commission's activities, had adopted resolution 17 (XXXVII), requesting that body to abide by its terms of reference, namely, to undertake a number of studies, in the light of the Universal Declaration of Human Rights, to make recommendations concerning the prevention of discrimination and the protection of racial, national, religious and linguistic minorities, and to perform any other functions which might be entrusted to it by the Economic and Social Council or the Commission on Human Rights.

64. The Sub-Commission, far from complying with that request, had simply ignored it; more than that, it had rebelled openly against the Commission by including in the agenda for its thirty-fifth session an item entitled "Review of the status and activities of the Sub-Commission and its relationships with the Commission and other United Nations bodies". It was just as absurd for the Sub-Commission, an advisory subsidiary body, to wish to debate its relationship with the Commission as it was for a member of the Commission to question his status vis-à-vis the Government he represented. In his delegation's view, it was inadmissible that the Sub-Commission, instead of performing the tasks entrusted to it by the Commission, such as carrying out the study which the Commission, in its resolution 38 (XXXVII) had instructed it to undertake on the use of the results of scientific and technological progress for the realization of the rights to work and to development, should waste its time and squander the Organization's resources trying to elude the Commission's control, endow itself with additional powers, deal with questions outside its competence or give detailed consideration to other issues which had absolutely no need for such treatment.

65. Thus, at its previous session, on 28 August 1981, the Sub-Commission had adopted a draft resolution requesting the Commission on Human Rights to authorize it to appoint "a delegation, not exceeding two persons ... to visit Mauritania in order to study the situation and ascertain the country's needs". However, on 24 August 1981, the Ambassador of the Islamic Republic of Mauritania in Paris had sent the Director of the Division of Human Rights a telegram, issued as document E/CN.4/Sub.2/489 - which he proceeded to read out - giving full information about the situation in Mauritania and categorically refuting the allegations contained in a report by the Anti-Slavery Society submitted to the Working Group on Slavery at its seventh session. There was therefore absolutely no point in sending a mission to Mauritania for the purpose of gathering what was quite unnecessary additional information. The only result of such action would be to burden the Organization with additional expenditure, all the more so in that, according to the statement of financial implications in annex II to the Sub-Commission's report, the two experts initially contemplated were to be accompanied by a substantive officer and one secretary. His delegation would therefore suggest that the Commission should give that proposal the reception it deserved and simply refuse to consider it.

66. He also questioned the usefulness of holding a seminar on violations of human rights through the exploitation of child labour, as recommended by the Sub-Commission; the Commission already had ample information on that question thanks, in particular, to the excellent report prepared by the Special Rapporteur, Mr. Bouhdiba. Moreover, the international community had gone beyond the stage of considering what attitude to adopt towards the exploitation of child labour, which it unanimously regarded as an intolerable phenomenon that should be eliminated. It was no longer a question of imposing a principle which no one contested but of going beyond the study stage and taking concrete measures, for example by making progress towards the elaboration of a convention on the rights of the child which, despite numerous declarations of intent, was slow in taking shape.

67. In another context, he wished to associate himself with the remarks made by various members of the Commission, particularly the representative of Brazil, concerning the wording of decision 3 (XXXIV) on the establishment of a post of United Nations High Commissioner for Human Rights, adopted by the Sub-Commission at its thirty-fourth session. In deciding to consider "the positive role a High Commissioner for Human Rights ... should play in the full enjoyment of human rights", the Sub-Commission was to some extent prejudging the issue. To be completely objective, it should have called for a consideration of the positive or negative role a High Commissioner might play, or simply of what that role might be, without further elaboration.

68. Experience unfortunately showed that the efficiency of the Sub-Commission was not being increased as its sessions and agenda grew longer, due to the addition of items which were completely extraneous to its mandate; at each of its sessions, the Sub-Commission, in the space of a few hours, adopted dozens of decisions and resolutions hurriedly, with almost no prior consideration, and without troubling to find out whether they were applicable in different national contexts, or to widely divergent legal systems and institutions. Consequently, in his delegation's view, a radical curtailment of the Sub-Commission's agenda was called for, starting with the deletion of all items concerned with the implementation of Economic and Social Council resolution 1503 (XLVIII). For one thing, the applicability in time of the procedure established by that resolution had been expressly limited to the elaboration and entry into force of the International Covenants on Human Rights. But those Covenants had long been not only elaborated, but signed and ratified, and a satisfactory system established to monitor their application. There was therefore no longer any need to impose that procedure on countries which had ratified the Covenants and which submitted periodic reports on their implementation. Also, various United Nations bodies dealing with that question quite often took conflicting decisions. Lastly, that procedure, besides being unpractical, was of only very limited value in that the communications submitted furnished very little information which was not already public knowledge. Their consideration merely occupied experts, officials and organs whose time and resources could more usefully be devoted to other tasks. The Commission should therefore decide to suspend that procedure as far as States parties to the International Covenants on Human Rights were concerned. A decision to that effect would not only encourage general accession to the Covenants, but also terminate the activities of the corresponding working groups. That was one of many ways of improving the efficiency of the various United Nations bodies competent in the human rights field, more especially that of the Sub-Commission on Prevention of Discrimination and Protection of Minorities; moreover, such a measure would entail a reduction, rather than an increase, in staff and expenditure.

The meeting rose at 10.55 p.m.